BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER RULING
DECISION NO. 145 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE

In the Matter of:

ATLANTIC OIL COMPANY (Employer)

PRECEDENT
RULING DECISION
No. P-R-340

FORMERLY
RULING DECISION
NO. 145

Employer Account No.

Claimant: Jess D. Russell
S.S.A. No.:
BYB: 10063 SD: 09203

The employer appealed to a referee from the department's Notice of Determination On Charge to Reserve Account which charged the employer's account with $510 (ten times the claimant's weekly benefit amount) under section 1030.5 of the Unemployment Insurance Code. After issuance of Referee's Decision No. LB-R-9680, we set it aside under section 1336 [now section 413] of the code. Written and oral arguments were submitted by the employer and the department.

STATEMENT OF FACTS

The claimant worked for the appellant from June 25, 1963 to September 20, 1963. He became ill and his wife reported this to his foreman on the evening preceding the claimant's next work day. On September 27, 1963, the employer's payroll clerk sent to the agent herein a notice stating simply that the claimant had "quit."

Effective October 6, 1963, the claimant filed a claim for benefits. His weekly benefit amount was computed to be $51.

In completing his claim form, the claimant entered thereon "shut down" as the reason for his separation from his employment with the appellant. A copy of the claim form was forwarded by the department to the employer or its agent. The agent duly responded with his own form entitled, "Request for Determination of Eligibility." Therein appeared the following:

> "It is requested that the facts of claimant's separation be reviewed to determine his eligibility under the following section of the U.I. Code:
>
> X Section 1256, Voluntary Quit or Discharge
>
> X Section 1257, Misstatement
>
> ___ Section 1264, Marital or Domestic
>
> "Claimant was employed as a Derrickman in the oil well drilling industry at the prevailing rate of $3.47 per hour from June 25, 1963 to September 20, 1963 when he quit his job for his own reasons. The rig did not go down until October 4, 1963. Work was available and a replacement was required."

The above statement was based upon the communication of September 27, 1963 from the employer's headquarters office to the agent. The agent has a separate form which he has made a practice of using when he wishes to request a ruling under section 1030 of the code. This form was not used in this case.

On October 31, 1963, the department interviewed the claimant who explained that he had been unable to work because of a "virus"; that he had notified the foreman; and that when he was able to return to work, he had done so; but that the "rig" was shut down at that time. The department also called the payroll clerk and discussed the claimant's separation from his employment. The departmental representative's notations of such discussion included the following:

> "Asked if her records showed clmt. was off sick & unable to work. She stated 'yes' but requested I call Mr. Clarence Sylvia."

In accordance with this suggestion, the departmental representative spoke with Mr. Sylvia (the foreman) and made the following notes of the conversation:

> "Discussed with Mr. Sylvia who verified clmt. notified him immediately of his illness- He stated (employ)er cannot hold these jobs- (employ)ees must be replaced immediately- since jobs require someone on job at all times."

Thereafter upon completion of its investigation, the department concluded that the claimant had been replaced during an excused absence because of illness. The department issued a notice of determination of eligibility and a notice of ruling holding that the claimant was not disqualified for benefits under sections 1256 and 1257(a) of the code and that the employer's account was not relieved of charges under section 1032 of the code. The employer did not appeal from these notices. The department also issued the notice of determination under code section 1030.5 from which the employer appealed as stated above.

At the hearing in this matter, the payroll clerk denied that her records showed that the claimant had been away from work because of illness. She testified that on October 31, 1963, she knew only that the claimant had "quit." The foreman testified that he had held the claimant's job open for him for 12 days although he had temporarily replaced him; that he had not heard from the claimant again during the 12-day period; and that he was not certain that the claimant was, in fact, ill because the claimant had on two prior occasions failed to report to work without notice. When asked why she had sent the termination notice to the agent before the 12-day period had expired, the payroll clerk could only say that she had assumed that the claimant had quit.

The employer contends that its agent's statement in response to the notice of claim was submitted in accordance with section 1327 of the code, not pursuant to section 1030 of the code. The agent testified that this procedure was followed because of the mandatory nature of the provisions of code section 1327, as distinguished from the permissive nature of code section 1030, and because he was not in possession of any other facts concerning the claimant's separation from the employer. It was also for this reason that no appeal was taken from the notices of determination and ruling which were not concerned with section 1030.5 of the code.

REASONS FOR DECISION

Section 1327 of the code provides:

"1327. A notice of the filing of a new or additional claim shall be given to the employing unit by which the claimant was last employed immediately preceding the filing of such claim, and the employing unit so notified shall submit within 10 days after the mailing of such notice any facts then known which may affect the claimant's eligibility for benefits."

Section 1328 of the code provides:

"1328. The facts submitted by an employer pursuant to Section 1327 shall be considered and a determination made as to the claimant's eligibility for benefits. The claimant and any employer who prior to the determination has submitted any facts or given any notice pursuant to Section 1327 and authorized regulations shall be promptly notified of the determination and the reasons therefor and may appeal therefrom to a referee within 10 days from mailing or personal service of notice of the determination. The 10-day period may be extended for good cause."

Section 1030 of the code provides in pertinent part:

"1030. (a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of such notice, submit to the department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work.

* * *

"(c) The department shall consider such facts together with any information in its possession and promptly issue to the employer its ruling as to the cause of the termination of the claimant's employment. . . ."

Section 1030.5 of the code provides:

"1030.5. If the director finds that any employer or any employee, officer, or agent of any employer, in submitting facts pursuant to Section 1030 or 3701, willfully makes a false statement or representation or willfully fails to report a material fact concerning the termination of a claimant's employment, the director shall make a determination thereon charging the employer's reserve account not less than 2 nor more than 10 times the weekly benefit amount of such claimant. The director shall give notice to the employer of a determination under this section. Appeals may be taken from said determinations in the same manner as appeals from determinations on benefit claims."

Section 1031 of the code provides:

"1031. No ruling made under Section 1030 may constitute a basis for the disqualification of any claimant but a determination by the department made under the providions of Section 1328 may constitute a ruling under Section 1030."

Section 1032 of the code provides:

"1032. If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause or was discharged by reason of misconduct connected with his work, benefits paid to the claimant subsequent to the termination of employment due to such voluntary leaving or discharge which are based upon wages earned from such employer prior to the date of such termination of employment, shall not be charged to

the account of such employer unless he failed to furnish the information specified in Section 1030 within the time limit prescribed in that section."

In Benefit Decision No. 6683 we considered a situation in which the employer had indirectly indicated that it did not wish a ruling; that it wished merely a determination of the claimant's eligibility. The employer used a form entitled "Request for Ruling and/or Determination of Eligibility." In responding to the notice of claim, the employer used such form but struck out the words "Ruling and/or." Section 1030.5 was not yet a part of the code when this case was considered. We stated in such decision:

"The fact that the employer did not desire a ruling nor request one is not controlling. Under section 1030(c) the department must consider information submitted by the employer, together with other facts in its possession, and must issue a ruling if the employer submits information in accordance with and of the type described in subsections (a) or (b) of section 1030."

In Benefit Decision No. 5949, we stated:

"There is nothing contained in Section 39.1 of the Act (now section 1030 of the code) or Section 232 (now 1030-1) of Title 22 of the California Administrative Code which makes it mandatory for an employer to make a formal request for a ruling in order that a ruling may be issued by the Department. Under Section 39.1 the Department is required to issue its ruling upon the employer's submission of 'any facts within its possession.' Section 232 provides, in substance, for the form and method of supplying such facts. It is our opinion that the submission of facts in compliance with both sections constitutes in effect a request for a ruling. . . ."

In Tax Decision No. 2289, involving a review of the denial of an employer's protest to charges under section 1035 of the code, the employer had submitted timely information to the department in response to the notice of new claim filed alleging that the claimant had voluntarily quit his work without good cause. The department issued and mailed to the employer a notice of determination that the claimant had left his employment with good cause. It did not issue a notice of ruling although its customary procedure had been to issue both a notice of determination and notice of ruling under such circumstances. The employer did not appeal from the notice of determination but contended that it had been misled by the department's failure to issue a notice of ruling and that the charge, therefore, was erroneous. Pertinent to the issue involved herein, we stated as follows:

> "Section 1328 of the code requires that the department make a determination of the claimant's eligibility for benefits pursuant to timely information furnished by the employer and notify the employer thereof. This admittedly was done on April 22, 1955.
>
> "Section 1030 of the code requires that the department promptly issue a ruling on the same facts submitted by the employer as to whether its account should be charged. However, leaving of work 'voluntarily and without good cause' has the same scope and meaning for both purposes under the code (Ruling Decision No. 1). Therefore, not only must any notice of a ruling agree with the notice of determination, but we have held that any appeal from either necessarily constitutes an appeal from both (Ruling Decision No. 13).
>
> "Section 1031 of the code provides that no ruling under section 1030 may constitute a basis for the disqualification of any claimant but a determination under section 1328 may constitute a ruling under section 1030; and code section 1032 refers to a determination under section 1328 as a ruling. Section 1032 reads in part:

'If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause. . . .' (Emphasis supplied)

"Any ruling under section 1030 of the code which expressly states that it is also a determination under section 1328 of the code is issued under section 1030 and also under section 1328. The use of the word 'or' in section 1032 of the code can be given effect only if a determination which is issued only under section 1328 may be effective as a ruling.

"Since determinations under section 1328 of the code may be made on any element of the claimant's eligibility for benefits with respect to which the employer has made a timely submission of facts to the department, it is clear that not every determination under section 1328 may be considered as a ruling under section 1030 of the code, which is limited to issues of whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work.

"Therefore, sections 1031 and 1032 of the code must mean that every determination under section 1328 of the code may or may not constitute a ruling under section 1030 of the code depending upon whether the particular employer was entitled to a ruling on the issue covered by the determination. In other words, if he was entitled to a ruling and received a notice of a determination under section 1328 of the code, no further notice was necessary.

* * *

"We conclude that the department's notice of a determination on April 22, 1955 under section 1328 of the code also constituted a notice of a ruling within the meaning of section 1030 of the code and that the petitioner's failure to make a timely appeal after receipt of the notice of determination barred its protest (Tax Decision No. 2061)."

In considering the above-cited decisions and others which may express the same view, we believed that employers should not be required to perform an idle act; that is, to expressly request a ruling. Obviously, any facts relating to a voluntary leaving of work or a discharge for misconduct are relevant to a ruling as well as to a possible disqualification under section 1256 of the code. Since section 1030.5 had not yet been added to the code, our interpretation of the pertinent provisions was to the advantage of the employers and of no disadvantage to the claimants. However, we think that the views expressed in the cited decisions should be reexamined in the light of code section 1030.5.

Section 15 of the code provides: "'Shall' is mandatory and 'may' is permissive." Therefore, section 1327 of the code is mandatory in nature since it provides that the employer shall submit any facts then known which may affect the claimant's eligibility for benefits (Huber v. The San Francisco Bank (1953), S.F. Superior Court, No. 43168). Realizing this, the employer's agent submitted the facts which he then had as supplied to him by the employer's main office. We believe that he also realized that he might not have all of the facts in the case and that these might be in the possession of someone in the employer's organization. Therefore, the agent requested only a determination of the claimant's eligibility for benefits since he was of the opinion that the provisions of code section 1030(a) were permissive; that the provisions of code section 1030.5 would apply only if the facts were submitted pursuant to section 1030(a); that is, only if he requested a ruling; and that he could thus avoid a possible charge against the employer's account under code section 1030.5. The agent did not expressly indicate that he did not wish a ruling under code section 1030(a).

Whether the procedure adopted by the agent did in fact and law make section 1030.5 of the code inapplicable in this case depends upon the interpretation placed upon sections 1327, 1328, 1030(a), 1030.5, 1031 and 1032 of the code. Statutes in pari materia, that is, those which relate to the same matter or subject, are to be construed together as if they constituted one act, and are to be construed to be in harmony with each other in order that each may be fully effective. (Crawford, Statutory Construction, sec. 231).

Having again reviewed these sections, we cannot agree with the employer that section 1030.5 is not applicable unless a ruling has been specifically requested. It is apparent to us, as we stated in Tax Decision No. 2289, supra, that when an employer submits information relating to a voluntary quit or discharge in response to a notice received under section 1327 of the code, such information is submitted pursuant to section 1030(a) as well as section 1327 of the code, and any determination issued by the department under section 1328 of the code responsive to such issue does constitute a ruling under section 1030 and section 1328 of the code. This interpretation, as we have previously stated, is to the advantage of employers generally since it relieves them of the burden of making a specific request for a ruling. Also, this interpretation gives effect and meaning to section 1030.5 of the code, for to construe it in the manner suggested by the employer herein would enable all employers to evade the penalty provisions of the section by simply stating that their information is being submitted under the provisions of section 1327 only and that they do not wish a ruling.

We can properly assume that the legislative purpose in enacting section 1030.5 of the code was to remedy some defect in the existing law. It is our obligation to carry out this purpose rather than to defeat it. We believe that the interpretation we have placed upon the pertinent sections of the code does make effective the legislative enactment.

We must now determine whether the employer's account is subject to charges under section 1030.5 of the code. The employer's payroll clerk informed the agent simply that the claimant had "quit." The agent enlarged upon this by stating that the claimant "quit his job for his own reasons." The agent, at least, suspected that this, if factual, was not complete. There were other material facts in the possession of the employer. The claimant's foreman knew these facts and knowingly withheld them from the employer's main office. Although these additional facts may not have been in the possession of the payroll clerk, it was the obligation of the employer to see to it that all of the facts in its possession were submitted to the department so that the department could perform its statutory duty. We, therefore, conclude that the employer wilfully withheld material facts within the meaning of section 1030.5 of the code (Ruling Decisions Nos. 142 [now Appeals Board Decision No. P-R-339] and 143).

It is our further conclusion that assessment of the maximum penalty which may be imposed under 1030.5 of the code is not warranted under the facts of this case. Section 1030.5 had been in effect for only a few weeks at the time the employer submitted its information to the department, and we had not at that time had occasion to consider appeals and issue decisions setting forth our interpretation of the section. The employer's agent recognized the employer's obligation to submit information under section 1327 of the code, but realized that he might not have all the facts concerning the termination. It was his opinion that, under the law, section 1030.5 would not be applicable unless he requested a ruling. Therefore, we hold that the employer's account shall be charged with two times the claimant's weekly benefit amount, or $102 under section 1030.5 of the code.

DECISION

The determination of the department is modified. The employer's account is charged with two times the claimant's weekly benefit amount, or $102 under section 1030.5 of the code.

Sacramento, California, July 10, 1964.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT

Pursuant to section 409 of the Unemployment Insurance Code, the above Ruling Decision No. 145 is hereby designated as Precedent Decision No. P-R-340.

Sacramento, California, May 3, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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